IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 6 OF 2002

M/S GOAPLAST PRIVATE LIMITED
having its registered office,
at Velho Building, Panaji and
represented by I.B.Muchandi,
Company Secretary,
Authorised representative,
residing at Porvorim Goa
Bardez Goa. ... Applicant

versus

1. M/S BANGALORE PESTICIDES
   LTD.,
   10th Main Road, 2nd Cross,
   Rajamahal Vilas Extension
   Bangalore - 560 080

2. SHRI A.K.KANORIA,
   Managing Director,
   Bangalore Pesticides Ltd.,
   10th Main Road, 2nd Cross,
   Rajamahal Vilas Extension
   Bangalore - 560 080

3. MR. K.A.GANESH(Deleted)

4. The State, through
   Public Prosecutor,
   Panaji. ... Respondents.

Mr. Sudesh Usgaonkar, Advocate for the Applicant.

Mr. A. R. Kantak, Advocate for Respondent No.2.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM : P. V. HARDAS, J.

DATE : 26TH FEBRUARY,2004.

ORAL JUDGMENT

This Criminal Revision Application at the instance of the Complainant assails the Order dated 6th October, 2001, passed by the learned Chief Judicial Magistrate, Panaji, Goa, in Criminal Case No.67/OA/94/A discharging Original Accused No.2/Respondent No.2.

2. It is not necessary to advert to all the facts. Suffice it to say that on presentation of the complaint under Section 138 of the Negotiable Instrument Act, 1881, the learned Trial Court recorded the verification statement and issued process against the Respondent/Accused. Vide Exh.7, the Substance of Accusation came to be explained to the Accused on 24th November, 1997. The Accused pleaded not guilty and claimed to be tried. It appears from the record that the Original Accused No.2 came to be joined subsequently to the filing of the complaint. The Complainant also moved for deletion of the name of Original Accused No.3 which was allowed by the learned Trial Court. After the particulars of the offence were explained i.e. 24th November, 1997, the matter was adjourned from time to time and on 24th September, 1999, the evidence of P.W.1

commenced. The examination-in-chief of P.W.1 was concluded and the matter was adjourned to 19th November, 1999 for cross-examination of P.W.1. Ultimately, the cross-examination commenced on 25th October, 2000. Thereafter, on 25th January, 2001, vide Exh.M-13, an application came to be filed on behalf of Original Accused No.2 for recalling of the process. The learned Chief Judicial Magistrate, Panaji, Goa, by his Order impugned in the present revision application allowed the application filed by Original Accused No.2 and recalled the process issued against Original Accused No.2 and discharged him. The learned Magistrate appears to have discharged Original Accused No.2 principally on grounds that there were no averments in the complaint that Original Accused No.2, who was styled as Managing Director, was responsible or in charge of and was responsible to the Company for the conduct of the business. The learned Trial Court also found that the complaint against Original Accused No.2 was bound to fail as no notice was issued to Original Accused No.2 in his personal capacity.

3. The Complainant being aggrieved by the aforesaid Order of the learned Trial Court, discharging Accused No.2 has filed Criminal Revision Application in this Court and this Court by its Order dated 28th February, 2002, issued notice to the Respondents. It

was with great difficulty that the present Respondents could be served and the present Respondents were ultimately served some time in October, 2003. Thereafter, this Court by its Order dated 14th November, 2003, after hearing the learned Counsel for Respondent No.2 admitted the Criminal Revision Application. The learned Counsel then appearing did not accept the notice of admission of the Criminal Revision Application and stated that the notice of admission of the revision be served on Respondent No.2. Thereafter, notices were issued to the Respondents and ultimately, by the endorsement of the Registry dated 12th February, 2004, the notice of admission was not claimed by Respondent No.2 and hence, was returned back.

4. Mr. A. R. Kantak, learned Counsel is now appearing on behalf of Respondent No.2. A preliminary point has been raised by Mr. A. R. Kantak, learned Counsel appearing on behalf of Respondent No.2 regarding the propriety of hearing this Criminal Revision Application in this Court particularly in view of the fact that under the Criminal Procedure Code, the Sessions Court as well as the High Court are vested with the jurisdiction of deciding the Criminal Revision Application. According to the learned Counsel appearing on behalf of Respondent No.2, a revision ought to be preferred before the learned Sessions Court and this

Court may not decide the revision which is presented to it directly. Reliance is placed by the learned Counsel appearing on behalf of Respondent No.2 on the Judgment of the learned Single Judge of this Court in **Shri Padmanabh Keshav Kamat** v. **Shri Anup R. Kantak and others** reported in 1998(2) GLT 114. In that case, the learned Single Judge held that in view of the Judgment of the learned Division Bench of this Court in **Madhavlal Narayanlal Pittle** v. **Chandrashekhar Chaturvedi and others** reported in 1976 Cri.L.J. 1604 a revision by a party without approaching the Sessions Court was maintainable. The learned Single Judge, however, remitted the revision for decision to the learned Sessions Court. Reliance is also placed on the Judgment of the learned Single Judge of this Court in **Tejram s/o Mahadeorao Gaikwad** v. **Smt.Sunanda w/o Tejram Gaikwad and others** reported in 1996 Cri.L.J. 172 in which the learned Single Judge of this Court held that the revision filed directly to the High Court without first approaching the Sessions Court was not maintainable but the learned Single Judge proceeded to decide the revision on merits.

5. Be that as it may, undoubtedly, a revision filed before the High Court is maintainable under the provision of the Code of Criminal Procedure. The ground is not in respect of the maintainability of the revision

but is in respect of the propriety of entertaining a revision at the instance of a party who has not approached the Sessions Court first. A revision is primarily a discretionary relief which the Court grants. No party has a right of filing a revision. In this case, the Criminal Revision Application came to be filed some time in the year 2002. It was with great difficulty that after nearly two years that the Respondents could be served. This Court admitted the revision somewhere on 14th November, 2003. Thereafter, repeated efforts of the Applicant to serve the Respondents proved futile and ultimately, somewhere in February, 2004, Respondent No.2 has been served. Therefore, according to me, it would not be proper to adopt a course of remitting this revision to the learned Sessions Court for adjudication. The offence complained of is under Section 138 of the Negotiable Instruments Act, 1881. The complaint was filed somewhere on 24th April, 1994. Ten years have already elapsed. In such circumstances, since a revision is maintainable, I propose to examine the revision on merits instead of remitting it to the learned Sessions Court.

6. An application for recalling of the process can only be entertained by the Court either before a charge is framed i.e. in a warrant case or the particulars of the offence in a summons case is

explained to the Accused. Once, either a charge or particulars of the offence have been stated to the Accused, the Court of the Magistrate or a Trial Court does not have the jurisdiction to discharge the Accused. An application for recalling of the process in essence is an application praying for discharge. In this case, the particulars of the offence were explained vide Exh.7 on 24th November, 1997 and the application for recalling of the process i.e. Exh.M-13 came to be filed on 25th January, 2001. This application was filed after the evidence of P.W.1 was recorded and was cross-examined on behalf of the Accused. The learned Trial Court ought not to have entertained an application for recalling of the process at that stage. There is no provision in the Criminal Procedure Code specially in respect of summons case where the Court has the power to discharge the Accused after the particulars are explained. The only power which can be exercised by the Court is under Section 258 of the Criminal Procedure Code. Section 258 of the Criminal Procedure Code empowers the Magistrate for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge. The power under Section 258 of the Criminal

Procedure Code can only be pressed into service in a summons case which is instituted otherwise then upon a complaint. The present being a summons case instituted on a complaint, the provisions of Section 258 of the Criminal Procedure Code are also not attracted. Therefore, once the particulars of the offence, as is required under Section 251 of the Criminal Procedure Code were stated to the Accused and the evidence of the Complainant as per Section 254 of the Criminal Procedure Code, the Magistrate had absolutely no jurisdiction to discharge the Accused by minutely examining the Complainant's evidence, when other witnesses were yet to be examined, and discharge the Accused on the ground that there was no prima facie case. The Magistrate had no jurisdiction at that stage to recall the process issued against the Accused. The Magistrate could only either acquit or convict the Accused in terms of Section 255 of the Criminal Procedure Code. Since this was a complaint case, the provisions of Section 258 of the Criminal Procedure Code also could not be invoked.

7. In the aforesaid circumstances, the Order of the learned Trial Court recalling the process and discharging Accused No.2 is wholly without jurisdiction.

8. Mr. Sudesh Usgaonkar, learned Counsel appearing on behalf of the Applicant has sought to place

reliance on certain Judgments to demonstrate that the Order of the learned Trial Court is unsustainable on the merits of the findings recorded by the Court. However, according to me, since the Order of the learned Trial Court is beyond jurisdiction of the Court, I do not propose to examine the challenges on the merits as these challenges would be available to the Accused at the stage of final decision of the trial.

9. In the result, Criminal Revision Application No.6 of 2002 is allowed. The Order impugned is hereby quashed and set aside. Record and Proceedings be remitted back to the learned Trial Court. The learned Trial Court shall proceed to decide the complaint on merits. It is needless to mention that the grounds raised by Accused No.2 would be available to Accused No.2 when the complaint is decided on merits. In that event, the learned Magistrate deciding the case on merits, shall decide the case on merits uninfluenced by any observations made in the Order impugned herein. In the circumstances, there shall be no order as to costs.

10. Parties to appear before the learned Trial Court on 22nd March, 2004.

P. V. HARDAS, J.